

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CRYOVAC, INC.,)
Plaintiff/Counter-Defendant.) Civil Action No. 04-1278
vs.) Hon. Kent A. Jordan
PECHINEY PLASTIC PACKAGING, INC.,)
Defendant/Counter-Plaintiff.)

PECHINEY'S MOTION FOR SUMMARY JUDGMENT ON PATENT ISSUES

1. Pursuant to Fed. R. Civ. P. 56, Defendant/Counter-Plaintiff Pechiney Plastic Packaging Inc. (“Pechiney”) respectfully moves for summary judgment on all Counts of Cryovac’s Second Amended Complaint and Pechiney’s First through Fifth Affirmative Defenses and on Pechiney’s Counterclaims for Declaratory Judgment of Non-infringement and Invalidity, which arise out of Plaintiff/Counter-Defendant Cryovac, Inc.’s assertion of infringement of United States Patent No. 4,755,419 (“the ‘419 patent”). There is no dispute as to any material fact, and Pechiney is entitled to judgment as a matter of law.

2. Pechiney concisely states the issues appropriate for summary judgment as follows:

- A. Pechiney's accused ClearShield™ products do not literally infringe claim 11 of the '419 patent because those products do not have at least seven layers "arranged symmetrically," as that term is properly construed.
- B. Pechiney's accused ClearShield™ products do not infringe claim 11 of the '419 patent under the Doctrine of Equivalents because Cryovac is estopped by prosecution history estoppel from asserting equivalents with

respect to the claim term “arranged symmetrically” and here it would violate the All Elements Rule and the Specific Exclusion Principal to find equivalents.

- C. Claim 11 of the ‘419 patent is invalid under 35 U.S.C. § 102 over the Allied Film and ANR Film C when the claim term “oriented” is properly construed.
- D. Claim 11 of the ‘419 patent is invalid under 35 U.S.C. § 103 because the subject matter of the claim would have been obvious to one of ordinary skill in the art over the Allied Film or ANR Film C.
- E. In the alternative, if the subject matter of claim 11 would not have been obvious, claim 11 is invalid of the ‘419 patent is invalid under 35 § U.S.C. 112 for lack of an enabling disclosure.
- F. Counts II, II, and IV are all predicated on the assertion that Pechiney infringed claim 11 and, so, those claims fail based on the absence of infringement and the invalidity of claim 11.

3. Pechiney submits contemporaneously herewith: (i) Memorandum in Support of Pechiney’s Motion for Summary Judgment on Patent Issues; (ii) Declaration of Luis Bogran in Support of Pechiney’s Motion for Summary Judgment on Patent Issues; (iii) Declaration of Eldridge M. Mount III in Support of Pechiney’s Brief on Claim Construction and Pechiney’s Motion for Summary Judgment; (iv) Declaration of Michael Douglas in Support of Pechiney’s Motion for Summary Judgment on Patent Issues; (v) Declaration of Seymour Gilbert; (vi) Declaration of Stratos Dimas; (vii) Pechiney Plastic Packaging, Inc.’s Unified Appendix for Its

Motions for Summary Judgment Vols. I-VI; and (viii) Pechiney Plastic Packaging, Inc.'s Unpublished Decisions Cited Within Its Motions for Summary Judgment.

WHEREFORE, there being no genuine issue of material fact, and Pechiney being entitled to judgment as a matter of law, Pechiney respectfully requests that summary judgment be entered in its favor, together with all other just and proper relief.

Respectfully submitted,

PECHINEY PLASTIC PACKAGING, INC.

Dated: October 19, 2005

By: /s/ N. Richard Powers

N. Richard Powers

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of Pechiney's Motion for Summary Judgment on Patent Issues to be served on:

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This 19th day of October, 2005 via federal express and hand delivery.

/s/ N. Richard Powers
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**[PROPOSED] ORDER GRANTING PECHINEY'S MOTION FOR SUMMARY
JUDGMENT ON PATENT ISSUES**

THIS MATTER having come before the Court and after consideration of the entire record in support of Pechiney's Motion for Summary Judgment on Patent Issues, this Court finds that:

1. Pechiney's accused ClearShield™ products do not literally infringe claim 11 of the '419 patent.

2. Pechiney's accused ClearShield™ products do not infringe claim 11 of the '419 patent under the Doctrine of Equivalents.

3. Claim 11 of the '419 patent is invalid under 35 U.S.C. § 102 over the Allied Film and ANP Film C.

4. Claim 11 of the '419 patent is invalid under 35 U.S.C. § 103 because the subject matter of the claim would have been obvious to one of ordinary skill in the art over the Allied Film or the ANR Film C.

5. Claim 11 of the '419 patent is invalid under 35 § U.S.C. 112 for lack of an enabling disclosure.

6. Cryovac's Counts II, II, and IV are all predicated on the assertions that claim 11 is valid and that Pechiney infringed claim 11 and, so, those claims fail based on the absence of infringement and the invalidity of claim 11.

AND, THEREFORE, IT IS HEREBY ORDERED THAT:

Pechiney's Motion for Summary Judgment on Patent Issues is hereby GRANTED pursuant to Fed. R. Civ. P. 56 and judgment is hereby ENTERED in favor of Pechiney and against Cryovac on Counts I-IV in Cryovac's Second Amended Complaint and Counts I-II of Pechiney's Counterclaims.

DATED: _____

The Honorable Kent A. Jordan

Submitted by:

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